

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-3061

CAROL M. SCHWAB,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Carol M. Schwab, of Washington, DC, pro se.

Meredyth D. Cohen, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With her on the brief were Peter D. Keisler, Assistant Attorney General, Steven J. Gillingham, Assistant Director. Of counsel on the brief was Paul St. Hillaire, Office of General Counsel, Office of Personnel Management, of Washington, DC.,

Appealed from: United States Merit Systems Protection Board

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DECIDED: May 14, 2007

Before MAYER, SCHALL and PROST, Circuit Judges.

PER CURIAM.

Carol M. Schwab appeals the Merit System Protection Board's final decision, which denied reconsideration of the initial decision affirming the Office of Personnel Management's decision that her election of coverage under the Federal Employees Retirement System was valid and irrevocable. Schwab v. Office of Pers. Mgmt., DC-0846-06-0340-I-1 (MSPB Oct. 3, 2006). We affirm.

We must affirm the board's decision unless it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without required procedures; or not supported by substantial evidence. 5 U.S.C. § 7703(c) (2000). An

election for coverage under FERS is irrevocable. Pub. L. No. 99-335, § 301(c), 100 Stat. 514, 600 (1986) (5 U.S.C. § 8331 note). Even if there were an exception for mental illness, as Schwab contends, the board's finding that she failed to establish sufficient incapacity at the time of her election is supported by substantial evidence. In addition, the board properly considered the evidence in reaching its decision, and the record indicates that Schwab made her election during the allowable time period. Finally, under the facts of this case, we perceive no reversible error in the exclusion of the proffered expert testimony, particularly when the proffered expert was allowed to testify as a non-expert and was allowed to present a broad scope of testimony.